



**U.S. Department of Justice**

National Domestic Communications Assistance Center  
Executive Advisory Board



September 29, 2017

Ms. Alice Bardney-Boose  
NDCAC EAB Designated Federal Officer  
Federal Bureau of Investigation  
Operational Technology Division  
Building 27958A  
Quantico, Virginia 22135

Dear Alice,

I have reviewed the minutes and hereby certify that they accurately reflect the proceedings from the May 17, 2017 National Domestic Communications Assistance Center (NDCAC) Executive Advisory Board (EAB) meeting held in Alexandria, Virginia.

Sincerely yours,

/s/ Preston Grubbs

Preston Grubbs  
Assistant Administrator  
Operational Support Division  
Drug Enforcement Administration  
Chairman, NDCAC EAB  
Preston.L.Grubbs@usdoj.gov

## U.S. Department of Justice



### National Domestic Communications Assistance Center Executive Advisory Board Meeting Minutes May 17, 2017



The Executive Advisory Board (EAB) of the National Domestic Communications Assistance Center (NDCAC) convened for its second meeting at 12:00 P.M. on May 17, 2017, at the Hilton Mark Center, 5000 Seminary Rd, Alexandria, VA 22311.

The meeting was called to order by the NDCAC EAB Designated Federal Officer (DFO) Alice Bardney-Boose. Ms. Bardney-Boose welcomed all attendees to the NDCAC EAB's second meeting and provided a brief overview of meeting logistics. Ms. Bardney-Boose also announced dates for the next two NDCAC EAB meetings: November 1, 2017 and April 18, 2018.

Peter Modafferi, Chairman of the NDCAC EAB, provided the group an overview of the meeting agenda (see **Appendix A**) and initiated an introduction of EAB members (see **Appendix B**) after thanking them for attending the meeting. Members of the public were also in attendance (see **Appendix C**). Chairman Modafferi spoke briefly about his positive and mutually beneficial interaction, and the interaction of his staff at the Rockland County District Attorney's Office, with the NDCAC. He encouraged those members of the EAB who have not yet had an opportunity to visit the NDCAC to make time in their schedules to get a tour of the facility and, in turn, increase their individual organizations' interaction with the NDCAC.

Chairman Modafferi also provided a brief history of the formation of the NDCAC focusing on the collaboration that was required throughout the law enforcement community to establish the center. He stressed the need for greater action within the law enforcement community, particularly at the State and local level, to increase awareness of the issues. Chairman Modafferi continued by introducing NDCAC Director Marybeth Paglino.

Ms. Paglino presented the EAB with an update (see **Appendix D**) highlighting recent activities at the NDCAC and with its various constituent programs. Ms. Paglino identified the approximate number of law enforcement clients; the growth over the last six months; and the type of calls routinely handled by the NDCAC's Technical Resource Group (TRG).

Ms. Paglino continued with a description of the NDCAC's Technology Sharing Program and provided a brief overview of the current tools being shared with the law enforcement community. She highlighted the program's mission to work with members of law enforcement to identify, leverage, and develop innovative and effective technical solutions; and to identify and clarify the technical capabilities and features that law enforcement views as important to accomplishing its mission.

Ms. Paglino described the NDCAC's Training Program as one that provides a comprehensive curriculum to educate law enforcement on new and emerging services and technologies. She also identified the approximate number of law enforcement personnel provided training both since the NDCAC's establishment as well as since the beginning of the current fiscal year. She

provided brief descriptions of the courses provided by the NDCAC to include those offered by other agencies and leveraged by the NDCAC for State and Local law enforcement and NDCAC developed training curriculum that fills in the gaps in existing communication training programs. The NDCAC also conducts regional outreach to familiarize the law enforcement community with the assistance available through the NDCAC.

Ms. Paglino concluded her presentation with a discussion of the NDCAC's Internet presence. The NDCAC's Internet presence is composed of two parts: a public facing website for general information about the NDCAC and its role; and a law enforcement secure portal that provides restricted access to an information repository and focal point for law enforcement and industry collaboration. Ms. Paglino introduced Mr. Patrick DeVall, Section Chief of the FBI's Operational Technology Division's Business Administration Section.

Mr. DeVall provided an overview presentation of the Federal budget process (see **Appendix E**) and how the FBI incorporates a bottoms-up approach to budget formulation. He included information about the overall Congressional appropriations process; appropriations subcommittees; and a timeline of spend plan development, budget submission, review, pass back, and continuing resolutions.

Mr. DeVall answered questions from members of the EAB who wanted to know how the Board could provide its perspective on the fiscal needs of the NDCAC. Mr. DeVall noted that Ms. Paglino, as the Director of the NDCAC, is the logical point with which to interface. Mr. DeVall noted that it is important for the Board to consider the timing of when it makes a case for additional funding because of the nature of the budget cycle - once the FBI submits its overall budget request (which necessarily include funds for the NDCAC) any additional requests after that time would either be put off until the next budgetary cycle or if the need is great enough, the FBI would decide how to fund the requirement within its already approved budget. Mr. DeVall stressed the point that neither the DOJ nor the FBI has the authority to approve final budgets, but rather to allocate Congressionally authorized and appropriated budgets among programs and projects for which they are responsible.

Mr. DeVall identified the occasional practice of utilizing funds that had been allocated to one program or project but were not expended being available for other projects on a one-time basis. Mr. DeVall also noted that as an Advisory Board chartered under the Department of Justice, it has an avenue to the Attorney General through the advice it provides regarding the technical challenges facing law enforcement; and the programs, operations, systems and management of the NDCAC.

EAB members asked questions regarding the NDCAC's budget during Mr. DeVall's presentation. Members inquired if the NDCAC's budget included the salary and expenses associated with the government personnel assigned to the NDCAC. Mr. DeVall stated that it did not. Members also asked whether the FBI utilizes a five-year resource allocation process. Mr. DeVall responded that the FBI currently utilizes a two-year budget cycle, but is moving toward a five-year method. Mr. DeVall stated that current efforts were focused on fiscal year 2019 and an important aspect of the budgetary process was to describe what could be accomplished with available resources, compare that with what programmatic goals needed to be achieved, and

provide a description of the gap between the two - highlighting the risks associated with the gap. Chairman Modafferi opined that Board members that were part of the EAB's Administrative Subcommittee could assist in formulating such a description. He emphasized the need to characterize the changing nature of crime: that crime is not diminishing, but rather it is different.

The open discussion portion of the EAB followed Mr. DeVall's budget presentation. Chairman Modafferi introduced EAB Vice Chairman Preston Grubbs to start the dialogue about how the EAB could effectively inform the NDCAC with respect to the needs of the law enforcement community. Mr. Grubbs reiterated the purpose behind establishing the NDCAC - as an aid to State and local law enforcement and that current budgets across the law enforcement community make the work done by the NDCAC even more important.

Chairman Modafferi stated that in the past he had several productive conversations with former FBI Director Comey and that it is important for Board members to establish such a rapport with a new FBI Director following Senate confirmation. Further, Chairman Modafferi stressed the need to develop relationships with all levels of executive management in the Federal agencies involved with the NDCAC as personnel change very often. Further, he identified the need to increase the education effort if the NDCAC were to expand in the types of support it provides to the law enforcement community.

Mr. Grubbs noted that it is up to members of the EAB to provide the justification for any proposed increase in NDCAC activities (and by extension any increase in NDCAC budget). Mr. Grubbs highlighted the need for the EAB to provide input to the NDCAC's goals and that those goals should support the mission of each respective agency represented on the Board. Further, specific actions to be undertaken should be identified for goals. Mr. Grubbs requested other members work with him in advance of the next meeting to define concrete goals as well as advice and guidance that could be provided to the NDCAC Director. Messrs. Sachs and Stawinski offered their assistance.

Discussion turned to an effort initiated by the law enforcement community to collect statistical information regarding the technological impediments. Several major national law enforcement and prosecutorial associations worked toward increasing the participation of agencies in a data collection effort related to mobile devices seized during a criminal investigation that law enforcement was unable to access. The NDCAC assisted in the associations' development of a tool to better quantify the full impact of "Going Dark" on investigations and cases and facilitated the collection of data from participating agencies. The tool was developed for agencies to submit data related to impediments (i.e., records requests, electronic surveillance, and mobile devices) experienced by law enforcement to provide greater insight into the challenges being faced by investigators and to leverage potential statistical information when interacting with Congressional members and their staffs.

It was noted that participation of law enforcement community in the statistical collection effort has been uneven. The hesitation was attributed to several factors: information pertaining to a diverse set of challenges cannot often be found within a single repository at an agency; multiple organizations within an agency may be responsible for quantifying different types of impediments; the statistical tool was considered too cumbersome for being too comprehensive

because of the inclusion of multiple methods of evidence collection, multiple crime categories, and multiple levels of lawful authority. There was a small amount of confusion among members about the nature of the information being collected by the statistical tool. Mr. Robert Novy addressed the issue by clarifying that the information sought was statistical in nature and not data collected in conjunction with investigations.

Mr. Henry Stawinski requested the Board be provided an overview of the support provided by the NDCAC. Ms. Paglino provided a brief description of how the law enforcement community coalesced to work together to begin to address the issues related to the increasing gap between the lawful authority to conduct electronic surveillance and the technical capability of service providers to effective court orders that mandate assistance; and how certain services and technologies did not conform to previous understanding of what constituted a telecommunications service for the purpose of electronic surveillance. That effort was initiated in 2006 and the issues impacting the law enforcement community were referred to as “Going Dark.” The conclusion of approximately 40 representatives from national organizations representing State and local law enforcement as well as Federal programs was to advance the establishment of the NDCAC - a centralized assistance center to share knowledge and solutions from within the law enforcement community. The representatives developed a business plan that outlined the basic functionalities of the NDCAC - with an original focus on electronic surveillance. Over time, the NDCAC has evolved to address other law enforcement needs. For example, in response to the law enforcement community’s view of the importance of call detail records, the NDCAC has developed tools to assist in the interpretation of provider returns to search warrants. Ms. Paglino stressed the point that the NDCAC does not have access to any data collected in conjunction with any investigation, but rather shares tools with agencies so that they can more easily and completely understand the information made available by providers. Further, Ms. Paglino stated that tools are developed by the NDCAC in response to calls received from the law enforcement agencies expressing a need for assistance. Ms. Paglino concluded with an offer to all EAB members to provide a tour of the NDCAC for a more in-depth look at the assistance provided by the center.

Mr. Stawinski stated that some of his colleagues were unaware of the pragmatic nature of the assistance provided by the NDCAC and instead thought of the NDCAC as an organization involved in more esoteric pursuits. With a better understanding of the functionality of the NDCAC, he volunteered to be an envoy for the NDCAC. Mr. Grubbs requested that Ms. Paglino compile a history of the NDCAC - a living document - to be shared with members of the EAB, and provided to new members as they join, to ensure a more thorough understanding of the establishment of the NDCAC and the evolving types of assistance provided by the center.

The group turned to a discussion of the draft report to the Attorney General. The consensus was that the draft was helpful for members in identifying and understanding the issues. Members had questions about how best to ensure the effective use of the report; how it would be presented and explained to the Attorney General; if the report would be made public; if the report could include a recommendation that members of the EAB meet with the Attorney General to discuss the issues; whether result of the statistical collection effort should be included with a description of why it is often difficult for law enforcement to quantify the impact of technological challenges; if

qualitative case examples of how impediments impact investigations could be submitted for inclusion in the report.

The group held a discussion about the posed questions and concluded that the report would be submitted through typical FBI channels; a recommendation to meet with the Attorney General would be added to the report; the report would be made available to the public; to the extent practicable, information about and from the statistical collection effort would be described; and qualitative examples would be included. Mr. Sachs identified that there are very good examples available in his organization and would draft input to the report. Chairman Modafferi solicited the group to provide additional examples and forward them to Mr. Sachs.

Mr. Haggan initiated a discussion about how best to inform the law enforcement community about the NDCAC. He had a recent opportunity to take a tour of the NDCAC and came away impressed, but believed that too few agencies and law enforcement personnel know about the NDCAC. Chairman Modafferi inquired about utilizing a marketing firm to assist in such an effort; Ms. Paglino responded that while possible, that it would require a reallocation of funds from other projects underway within the NDCAC and be in full compliance with the Federal Acquisition Regulation (FAR) which governs the acquisition process by which the NDCAC acquires goods and services by contract with appropriated funds. Bowers volunteered to research the issue and provide the group feedback. The need to constantly re-educate agencies and keep customers aware of services was identified as a significant challenge for an organization such as the NDCAC trying to serve such a diverse set of constituents. Mr. Bowers volunteered to research the issue of engaging a firm that could assist the NDCAC with a communications and/or marketing plan. Ms. Paglino advised that any promotion strategy should be staged as to not overwhelm limited NDCAC resources for fear of losing credibility with current and potential clients.

Mr. Derrick Driscoll provided the report of the EAB Administrative Subcommittee. The Subcommittee had been assigned the task of developing a process to identify and recommend candidates for the NDCAC Deputy Director. Mr. Driscoll stated that it was the conclusion of the Administrative Subcommittee that it would be extraordinarily difficult to have a State or local law enforcement agency fully commit a high-ranking resource for any significant amount of time. It is understandable that any State or local agency would find it difficult to rationalize the nomination of one of its high-ranking officials to serve one or more three-year terms as NDCAC Deputy Director. The loss of leadership for such an extended period would be difficult for a single agency to justify. Further, despite the agency being reimbursed for a candidate's salary and benefits, the disruption in an official's career will also impede volunteers from committing to serve one or more three-year terms as Deputy Director.

Mr. Driscoll stated that the Administrative Subcommittee had identified an alternative solution to put before the EAB – identify candidates from the Drug Enforcement Administration (DEA) to fill the Deputy Director position. Mr. Driscoll stated the DEA is regularly requested to assist the law enforcement community based on the strength of its electronic surveillance expertise. The DEA has a considerable understanding of the many varied aspects of the Going Dark issue and is keenly aware of the mission and goals of the NDCAC. In fact, the DEA is instrumental at the NDCAC – providing insight into the needs of the law enforcement community; it is represented

on the EAB; and has assigned, on-site personnel at the NDCAC with operational experience, technical know-how and insight into the capabilities of the DEA since its inception.

Finally, the DEA has a track record of supporting the State and local law enforcement community and has earned a level of nationwide trust; and perhaps most importantly, the DEA has the personnel resources to devote to the NDCAC and is willing to share an experienced manager to fill the NDCAC Deputy Director role.

Mr. Driscoll further described the Subcommittee's deliberations with respect to the Deputy Director position. The Subcommittee was concerned about the potential to have the State and local law enforcement viewpoint diluted to some extent by the appointment of a Deputy Director from the DEA. However, Mr. Driscoll cited several mitigating factors that led the Subcommittee to conclude the State and local law enforcement community's interests would be paramount to the NDCAC. The State and local law enforcement community continues to be a valuable contributor to the ongoing maturation and evolution of the NDCAC into a robust center providing technical support. The NDCAC makes a point to engage the law enforcement community through outreach efforts that include participation in law enforcement association conferences as well as pro-actively reaching out to agencies across the country. The NDCAC's Technical Resource Group also interacts with the law enforcement community daily when responding to requests for assistance and incorporates that feedback into NDCAC programs.

The NDCAC sponsors a Technical Fellowship for interested State and local, technically-oriented law enforcement officers and other personnel to enhance their technical skills and provide their expertise in areas that mutually improves information and intelligence sharing within the law enforcement community. Technical Fellows assist the NDCAC by providing a local perspective to national matters. During Administrative Subcommittee deliberations on this topic, there was a recognition that to further increase State and local law enforcement involvement, the NDCAC should explore the formation of an Executive Fellowship Program. Such a Program would allow a State or local agency executive to participate in the activities of the NDCAC and to provide direct input into NDCAC programs. Participants in an Executive Fellowship Program would be effective, vocal ambassadors for the NDCAC. The EAB Administrative Subcommittee would review applications and recommend suitable candidates; and the NDCAC would coordinate with the Executive's agency to ensure a smooth transition and address all logistical concerns.

Finally, with respect to integrating the State and local perspective, the NDCAC recognized that need when filling positions. It has three former members of the State police agencies on its staff as program managers of its Training Program, Technology Sharing Program, and Technical Resource Group (TRG).

Mr. Driscoll concluded by describing next steps should the Board approve the Subcommittee's recommendation. The first step requires the Administrative Subcommittee to establish the qualifications (e.g., criteria / eligibility requirements) it seeks in a Deputy Director and provide that information to the DEA for incorporation into its candidate selection mechanism. The DEA has a robust internal process for identifying candidates and, as a national law enforcement agency, it has a significant pool of talented, high-level personnel from which to select a technically accomplished candidate that could contribute to the mission of the NDCAC. A

Deputy Director candidate would be identified by DEA based on the Subcommittee's criteria and candidates' information would be forwarded to the Administrative Subcommittee for review. If the Subcommittee reaches consensus on a candidate, it would formulate a recommendation to the full Board. The EAB would, in turn, review, confirm, and if a candidate is found suitable agree to recommend appointment of that candidate to the Attorney General.

Chairman Modafferi opened the floor to a discussion regarding the Subcommittee's recommendation. Members inquired if the Subcommittee had considered State and local personnel who would be near retirement; or if participation in a joint task force would be a requirement. Mr. Driscoll confirmed the Subcommittee considered nearly retired personnel but the group concluded that upon retirement, any such candidate would necessarily be hired as an FBI employee and would result in both Director and Deputy Director positions being filled by FBI personnel. With respect to specific requirements of the position, the Administrative Subcommittee will undertake the establishment of qualifications if the full Board approves its recommendation to move forward. Members also asked if the final decision was to be the DEA's. Mr. Driscoll clarified that the DEA would utilize its internal candidate selection processes to identify candidates for the Administrative Subcommittee to consider and following Subcommittee consensus, candidates would be presented to the full Board for final approval and recommendation to the Attorney General for appointment. Mr. Driscoll stated that this process was akin to that of filling similar positions at Interpol.

A motion to accept the recommendation was made by Mr. Cannon and seconded by Mr. Bowers. The members of the EAB unanimously approved the recommendation.

Chairman Modafferi initiated a group discussion about the NDCAC EAB's need to establish an additional Subcommittee – one focused on the technology impacting law enforcement. This issue had been tabled at the previous EAB meeting. Chairman Modafferi reiterated the need to identify areas of focus for the NDCAC and to assist the EAB in recommending priorities for the NDCAC - i.e., the nuts and bolts of the assistance provided by the NDCAC. Chairman Modafferi solicited the group for someone to lead a Technology Subcommittee; Mr. Sachs volunteered to serve as chairman. He stated the members of the Technology Subcommittee may be either members of the EAB or their technical designee. He recommended to interested members that each appoint someone from their respective organizations to be a representative to the Technology Subcommittee. The following members / designees were identified:

Rockland County DA's Office	Peter Modafferi / Josh Landers
Charleston County, SC	Al Cannon / TBD
Prince George's County Police Department	Henry Stawinski / Alan Lee
US Marshalls Service	Derrick Driscoll / Robert Alexander
Immigration and Customs Enforcement	Alysa Erichs / Brent Goodwin
Drug Enforcement Administration	Preston Grubbs / Fred Smith

Chairman Modafferi requested anyone else interested in participating in the Technology Subcommittee should, within a week, forward their names and/or the names of their designees to Ms. Bardney-Boose. Chairman Modafferi encouraged all members consider naming a designee to participate in the Technology Subcommittee on behalf of their respective agencies.



Mr. Cannon provided his perspective on the importance of the issue and the need to view the complexity in its totality: how technical issues impact law enforcement at every level; how jurisdictional issues impact law enforcement; shifting priorities and resources; how this issue can be overshadowed by others and/or a lack of expertise in addressing technological impacts. He concluded his remarks by mentioning the Board is in a unique position to impact the issue.

Chairman Modafferi turned to the topic of the next meeting of the NDCAC EAB. Ms. Bardney-Boose stated the next two NDCAC EAB meetings will be held on November 1, 2017 and April 18, 2018. Ms. Bardney-Boose will coordinate with the group regarding meeting logistics and address the administrative requirements of holding the next public meeting.

Chairman Modafferi moved to the last item on the agenda, the acknowledgement of comments submitted by interested parties in response to the public notice of the meeting. Ms. Bardney-Boose informed the group that no comments had been received.

Ms. Bardney-Boose briefly discussed administrative items including travel reimbursement for members and appointment (or reappointment) letters for the State and local law enforcement representative to be designated Special Government Employees. She concluded by thanking the members for participating and adjourned the meeting.

Appendices cited in these minutes are available separately.